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REPORT TO THE FORTY-SIXTH LEGISLATURE

MONTANA DEPARTMENT OF REVENUE

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HELENA, MONTANA 59601

REPORT OF THE COAL TAX OVERSIGHT COMMITTEE

November 1978

Published by

MONTANA LEGISLATIVE COUNCIL

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Report of the Coal Tax Oversight Committ



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REPORT OF THE
COAL TAX OVERSIGHT COMMITTEE

REPORT TO THE
FORTY-SIXTH LEGISLATURE

November 1978



Membership of the
Coal Tax Oversight Committee

Sen. Dave Manning,
Chairman

Rep. E. N. Dassinger

Sen. William Mathers,
Vice-Chairman

Rep. Ed Lien

Rep. Warren O'Keefe

Sen. George Roskie

Rep. Elmer Severson

Sen. Thomas Towe

Staff Researcher: Teresa Olcott Cohea

Assisting in bill drafting: Randall J. McDonald

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FARMERS HOME ADMINISTRATION IN FARM OWNERSHIP
LOANS.

SUMMARY

The Coal Tax Oversight Committee recommends the following bills and joint resolutions to the 46th Legislature:

- a) a bill to establish preference for investment of certain state funds in Montana securities;
- b) a bill to create the Montana Product Development Corporation, a public corporation to provide financial aid for products and investments;
- c) a joint resolution urging the Board of Investments to purchase more Small Business Administration guaranteed loans;
- d) a joint resolution urging the Board of Investments to participate with the Farmers Home Administration in farm ownership loans.

The Committee also presents the following bill, without recommendation, to the 46th Legislature:

- e) a bill to create the Montana Homestead Land Program, devoted to the acquisition, lease, and eventual sale of agricultural land.

SENATE JOINT RESOLUTION NO. 2

INTRODUCED BY WATT, FASBENDER, ROSKIE, MURRAY, ROBERTS

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE LEGISLATIVE COMMITTEE ON PRIORITIES TO APPOINT THE APPROPRIATE STANDING COMMITTEE TO CONDUCT AN INTERIM STUDY OF THE BEST MEANS TO PROMOTE GOOD QUALITY MIDDLE AND LOWER INCOME HOUSING AND OTHER MONTANA INVESTMENTS THROUGH THE INVESTMENT OF THE HOME VARIOUS TRUST FUNDS AND TO PRESENT RECOMMENDATIONS AND PROPOSED LEGISLATION TO THE 46TH LEGISLATURE.

WHEREAS, the Board of Investments is responsible for hundreds of millions of dollars; and

WHEREAS, the directives under which many of the funds involved are managed require the highest practical earnings commensurate with safety; and

WHEREAS, in order to earn the highest practical earnings, most of our investments ~~must be~~ ARE MADE out of state; and

WHEREAS, although high earnings cannot generally be obtained from investments in Montana, capital investment is needed in Montana; and

WHEREAS, the newly established Coal Trust Fund will

receive continuous infusions of additional funds and has neither a directive nor a necessity to maximize its earnings; and

WHEREAS, private lending institutions cannot supply the capital needed to finance homes for middle income and low income people because such people cannot make sufficiently high payments.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Committee on Priorities is requested to appoint the appropriate standing committee to conduct an interim study and present recommendations and proposed legislation to the 46th Legislature concerning the best means to promote good quality middle and lower income housing through the investment of the corpus ~~of the Coal Trust Fund~~ VARIOUS TRUST FUNDS UNDER THE SUPERVISION OF THE STATE in a manner which will prevent loss or diversion of the corpus but will give priority to promoting such housing AND OTHER INVESTMENTS IN THE STATE OF MONTANA rather than to achieving a high rate of return. The study should also determine the roles to be played, if any, by the Board of Investments, the Board of Housing, other state officers and agencies, and private financial institutions.

-End-

SENATE JOINT RESOLUTION NO. 44

INTRODUCED BY TOWE, MURPHY, WATT, MANNING, R. SMITH,
 REGAN, BROWN, TURNAGE, MCOMBER, FASBENDER, JERGESON
 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF
 REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE
 COMMITTEE ON PRIORITIES TO EXPAND THE SCOPE OF THE INTERIM
 STUDY ON COAL TAX TRUST FUND INVESTMENTS TO INCLUDE AN
 INVESTIGATION OF THE FEASIBILITY OF AN ~~AGRICULTURAL~~ ~~TANK~~
~~BANK USING SUCH FUNDS, THROUGH LOANS OR OTHERWISE, TO HELP~~
~~PEOPLE GET A START IN AGRICULTURE OR BUSINESS.~~

WHEREAS, the 45th Montana Legislature recognizes the
 value of and need for family farms in the state; and

WHEREAS, the high initial capital requirement bars many
 younger persons from entering into farming or ranching; and

WHEREAS, many younger persons born and raised on
 Montana farms and ranches are leaving the agricultural
 sector due to the high cost of obtaining land; and

~~WHEREAS, the province of Saskatchewan deals with this
 problem with a program whereby the province purchases
 agricultural land and leases it for lifetime periods with an
 option to buy in--optimally--sized units--for a family
 operation--to qualified citizens--desiring to engage in
 farming or ranching--but unable to raise the initial capital~~

~~required--and~~

WHEREAS, after 1979, one-half of the coal severance tax
 must be invested in a trust fund established in the Montana
 Constitution; and

WHEREAS, investment of this fund in out-of-state assets
 would accentuate the export of money and jobs for Montana
 citizens, while in-state investment would more benefit the
 people of Montana; and

WHEREAS, land is a commodity constantly increasing in
 value and is the sort of asset in which a prudent trustee
 would invest.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE
 OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Priorities is requested to
 further assign the subcommittee appointed under Senate Joint
 Resolution 2 to study certain possibilities for coal tax
 trust fund investments to also study the feasibility of
~~establishing an agricultural land bank in Montana--on--the
 Saskatchewan model--or making funds available through bank
 loans or otherwise or through other programs that will
 enable young farmers to get a start in agriculture--and on a
 basis which safeguards the property tax base of local
 governments AND THAT WILL ENABLE OTHER YOUNG PEOPLE TO GET A
 START IN BUSINESS.~~

INVESTMENT STUDY

At the close of the 1977 session, the Committee on Priorities assigned SJR 2 and SJR 44 to the Coal Tax Oversight Committee.

SJR 2 requested a study of "the best means to promote good quality middle and lower income housing through the investment of the various trust funds under the supervision of the state in a manner which will prevent loss or diversion of the corpus but will give priority to promoting such housing and other investments in the state of Montana rather than to achieving a high rate of return."

SJR 44 requested a study of "the feasibility of making funds available, through bank loans or otherwise or through other programs, that will enable young farmers to get a start in agriculture on a basis which safeguards the property tax base of local governments and that will enable other young people to get a start in business."

To begin its study, the Committee reviewed: 1) the existing statutes governing the state's unified investment program; and 2) the state's existing housing program. The material the Committee reviewed and the action it took on each topic are discussed below.

MONTANA'S UNIFIED INVESTMENT PROGRAM

Article VIII, section 13 of the 1972 Constitution directed the legislature to establish a unified investment program for public funds. Although the 1889 Constitution contained numerous sections designed to establish a unified program, the state had no central investment agency or policy until the 1970's. Four state agencies -- each with its own staff, policies, and recordkeeping system -- invested public funds. Legislative efforts to centralize the investment procedure under the State Board of Land Commissioners resulted only in a literal "rubber-stamping" of previously taken agency actions.¹

Seeking to end this duplication and to increase the efficiency of the state's investment program, the Executive Reorganization Act of 1971 designated the Board of Investments as the sole authority to invest state funds.

Board of Investments

The Board is composed of five members "informed and experienced in the subject of investments," who are appointed by the Governor for 4-year terms. The Board is allocated to the Department of Administration for administrative purposes.

The department provides the Board's staff from its Investment Division.

By statute, the Board is charged with investing the state's trust funds and surplus funds "to the maximum extent" allowed by law and "with the need and timing of cash expenditures for particular purposes" in mind. In practice, the Board establishes the policies -- within the confines of the law -- governing the state's investment policies and reviews the staff's investment transactions. The Investment Division performs the daily investment activities required to implement these policies.

Funds in the Investment Program

At present, the Board manages 32 major funds, including the Short-Term Investment Pool which has 96 state and local participants. A list of these funds appears in Appendix I.

As of July 1, 1978, the total amount of funds invested by the Board was \$796,313,172.

Statutes Governing Investment of the Unified Investment Program

Since 1973, Montana statute has required that the Board use a modified prudent man rule in investing funds under its management. This means that the Board must consider two factors in determining its investments: 1) what investments are permitted by statute and 2) which of these investments fulfills the requirements of the prudent man rule.

Section 79-310 [17-6-211] contains a list of securities in which the Board may invest. The section also lists exceptions to these general rules, or instances in which specific funds may not be invested in certain types of investments. For example, this section (and the constitution) forbids investment of most public moneys in corporate stock.

Section 79-308 [17-6-201] establishes the prudent man rule as the second controlling factor in the Board's investment. The Board is directed to invest public funds

with that degree of judgment and care, under circumstances from time to time prevailing, which men of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation but for investment, considering the probable safety of their capital as well as the probable income to be derived.

This language is a restatement of a principle laid down by a Massachusetts Supreme Court judge in the 1830 case Harvard

College v. Amory. The decision represented a distinct break from the English tradition of trusteeship, which required a trustee to act as a conservator of property, not as a manager, and in no circumstance to put the trust property in any risk. It gave the trustee much more latitude for using his judgment in making investments. Further, it emphasized the income produced was as important a consideration in making an investment as was the safety of the capital. As one observer noted, the decision "freed the Massachusetts judiciary from the ancient English shackles."²

Although Montana's prudent man rule has never been tested in the Montana Supreme Court, an extensive body of law has developed on the prudent man rule in general.

The definition of the "degree of judgment and care...which men of prudence, discretion, and intelligence" use in making investments has, naturally, been the subject of many cases. Justices seem to agree that a prudent investment can be recognized but that a court list of acceptable trustee behavior would violate the spirit of the rule. However, they have isolated several important characteristics of a prudent investment.

First, a trustee must use more care in making investments than he would if he were investing his own money. In re Whiteley Ch. D 347 (1886), the court established the standard as that of the prudent family man, investing for "the benefit of other people for whom he felt morally bound to provide." Second, many courts have held that "a stricter standard of care and skill is applicable to corporate or other professional trustees than that which is applicable to individual nonprofessional trustees." (In re Schlemm's Estate, 78A 2d 156[1951]) Third, in making investments the prudent trustee has a duty to "use reasonable care" in investigating each investment, taking into account the following factors:

- (1) the marketability of the particular investment;
- (2) the length of the term of the investment (the maturity date, the callability, or redeemability);
- (3) the probable duration of the trust;
- (4) the probable condition of the market with respect to the value of the particular investment at the termination of the trust, especially if at the termination of the trust the investment must be converted into money for the purpose of distribution;
- (5) the probable condition of the market with respect to reinvestment at the time when the particular investment matures;
- (6) the aggregate value of the trust estate and the nature of the other investments;
- (7) the requirements of the beneficiary or beneficiaries, particularly with respect to the amount of the income;
- (8) the other assets of the beneficiary or beneficiaries, including earning capacity;
- (9) the effect of the investment in increasing or

diminishing liability for taxes. (Day v. First Trust & Savings Bank, 118 P 2d, 51 [1941]; Estate of Bouffleur, 26 Cal Rptr. 173 [1963], etc.)

In investigating investments he may take the advice of other persons, but the courts have held numerous times that a trustee operating under a prudent man rule must use his own judgment in making investments.

The phrase "not for speculation but for investment, considering the probable safety of their capital as well as the probable income to be derived" is another central concept in the prudent man rule. While the phrase seems to create a balance between the importance of protecting the interest and of reaping income, the courts have consistently given more weight to the safety of the capital. In the often-cited case In re Hall et al. (58 N.E. 11 [1900]), the court advised trustees to abjure speculation:

"...discretion...should not be held to authorize investment of the funds in new, speculative, or hazardous ventures. Surely, there is a mean between a government bond and the stock of an Alaskan gold mine, and the fact that a trustee is not limited to the one does not authorize him to invest in the other."

And in Mattocks v. Mounton, (24 Atl. 1004) the judges held that:

"While, of course, all investments, however carefully made, are more or less liable to depreciate and become worthless, experience has shown that certain classes of investments are peculiarly liable to such depreciation and loss. These, of course, would be avoided by every prudent man who is investing his own money with a view to permanency and security, rather than chance of profit. A trustee should, therefore, avoid them, even though he sincerely believes a particular investment of that class to be safe as well as profitable."

Justices have almost universally characterized certain investments as speculative and not permissible under the prudent man rule: 1) direct investment in business; 2) purchases of land for the purpose of resale; 3) mortgages on property outside the state in which the trust is created; 4) second or junior mortgages; and 5) unsecured loans.

Current Investments Held by the Board

Appendix II shows the type and relative percentage of investments held by the Board as of June 30, 1978.

The latest comparative yield figures (as of June 30, 1978) are shown on the following page:

PAR (000)	TREASURER'S FUND	AVERAGE MATURITY (YEARS)	YIELD
\$ 3,500	Bank Commercial Paper	.03	7.38
1,500	Industrial Commercial Paper	.01	7.25
57,700	Repurchase Agreements & U.S. Trsy. Bills	.003	7.05
1,400	Certificates of Deposit	.48	7.09
10,200	Bankers' Acceptances	.06	7.26
109,437	STIP	.003	7.50
<u>\$183,737</u>	Total/Averages	.01	7.34

SHORT-TERM INVESTMENT POOL

\$ 5,700	Industrial Bonds	11.44	8.59
2,000	Banks and Insurance	5.93	7.84
3,500	Other Financial	7.05	8.65
500	Transportation, excl. Railroads	26.66	8.45
1,500	Utilities	24.29	8.63
5,980	Canadian Bonds	25.52	9.09
18,900	Repurchase Agreements & U.S. Trsy. Bills	.40	7.28
69,600	Time Certificates of Deposit	1.35	7.21
1,250	Bankers' Acceptances	.06	6.90
30,500	Government Bonds	5.78	7.91
32,250	Government Agencies	4.01	7.84
<u>\$171,680</u>	Total/Averages	4.15	7.62

ALL LONG-TERM FUNDS

\$110,667	Industrial Bonds	20.40	8.32
28,075	Banks and Insurance	19.93	8.07
33,430	Other Financial	15.51	8.21
10,267	Transportation, excl. Railroads	13.44	8.04
19,932	Railroads	10.41	8.32
148,069	Utilities	22.84	7.55
40,327	Canadian Bonds	22.01	9.17
2,296	Convertible Bonds	19.87	5.85
9,649	Repurchase Agreements & U.S. Trsy. Bills	.89	7.04
58,130	Mortgages	10.00	7.30
300	Time Certificates of Deposit	.17	7.53
17,800	Bankers' Acceptances	.07	7.49
1,500	Industrial Commercial Paper	.00	7.50
4,898	Government Bonds	10.28	6.91
49,460	Government Agencies	18.02	7.83
2,648	All Municipalities	14.52	8.56
<u>\$537,443</u>	Total/Averages	17.80	7.92

\$783,428 Grand Total Fixed Income Less Treasurer's STIP Investments

\$ 71,300 Total Montana Certificates of Deposit

\$ 58,130 Total Montana Mortgages

Compiled by: Investment Division, Department of
Administration

Investment of the Coal Tax Trust Fund

The Board began investing the coal tax trust fund in July, 1977. As of September, 1978, the funds were invested in corporate bonds, federally guaranteed securities, and some short-term investments. A full list appears in Appendix III.

Investment in Montana

The Committee was particularly interested in learning what percent of state funds is invested in Montana.

The 1974 legislature added the following subsection to the list of permissible investments (79-310) [17-6-211]:

(4) The state board of investments shall endeavor to direct the state's investment business to those investment firms and/or banks which maintain offices in the state and thereby make contributions to the state economy. Further, due consideration shall be given to investments which will benefit the smaller communities in the state of Montana. The state's investment business will be directed to out-of-state firms only when there is a distinct economic advantage to the state of Montana.

While the Board has since its inception regularly invested in Montana, it has in recent years attempted to increase the amount of money invested in the state in several ways.

In 1975, the Board formed a joint committee with the Montana Bankers' Association to examine the Board's mortgage purchasing policy and to receive recommendations for change. The Board holds its monthly meetings in different cities throughout the state and invites local bankers to attend and familiarize themselves with the mortgage policy. This program seems to have helped. Although the number of mortgages bought decreased slightly in the period 1971-1974, in 1975 the Board increased the number of mortgage holdings 2.2%. Last year, the Board bought 95% of the mortgages offered to it. As of June 30, 1978, \$58,130,000 was invested in Montana mortgages.

The Board also recently initiated a program of buying certificates of deposit or savings certificates with two- to five-year maturities on a bid basis from Montana financial institutions. During the five years 1971-72 to 1977-78, the amount invested in Montana CD's increased from \$33,736,188 to \$71,300,000, or 111%.⁴

Determining what percent of the total state funds is invested in Montana is difficult. If "in-state investments" is construed narrowly to mean businesses located solely in Montana and mortgages on Montana real estate, then the

percentage is relatively small: on May 31, 1977, only 16% was invested in Montana. If, however, the definition is expanded to include investment in any concern that employs Montanans and pays Montana tax, then the percentages are considerably higher, as shown in the following chart:

TOTAL FUND

Montana C.D.'s	\$ 44.9M
Montana Mortgages	42.3M
Montana Corporates	87.1M
Montana C/S	5.7M
Total	<u>\$180.0M</u>

Total Investments = \$626.9M (includes STIP & Treas.)
 PERCENT INVESTED IN MONTANA 29%

PERS

Montana Obligation	\$ 1.2M
Montana Mortgages	20.1M
Montana Corporates	24.3M
Montana C/S	2.9M
Total	<u>\$ 48.5M</u>

Total Investments = \$139.1M
 PERCENT INVESTED IN MONTANA 35%

TRS

Montana Mortgages	\$ 21.4M
Montana Corporates	22.9M
Montana C/S	2.9M
Total	<u>\$ 46.3M</u>

Total Investments = \$118.7M
 PERCENT INVESTED IN MONTANA 39%

TRUST & LEGACY

Montana Corporates	\$ 19.98M
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Total Investments = \$71.3M
 PERCENT INVESTED IN MONTANA 28%

Prepared by Investment Division, Department of Administration
 (30 June 1976).

JOINT MEETING WITH BOARD OF INVESTMENTS

Having reviewed the current investment statutes and program, the Committee held a joint meeting with the Board of Investments in September, 1977, to discuss possible changes in the investment program that would stimulate Montana's economy.

Committee members questioned the Board on the supply of capital in the state, the Board's procedure in seeking Montana investments, and the effect of various possible changes in the unified investment program, such as: 1) allowing investment in more high-risk loans; 2) allowing a lower rate of return for investments in Montana; 3) providing for the sale of revenue bonds to finance programs to help young farmers and businessmen; 4) providing a loan guaranty program for high-risk loans; and 5) requiring all state funds to be invested in the state.

In reply, Board of Investment members made the following points:

- 1) the legal definition of "trust" prevents the Board from making high-risk investments with retirement funds, coal tax trust funds, and any other trust funds under its management;
- 2) that subsidizing social programs is incompatible with sound investment of funds; and
- 3) that existing policy and statute allows the Board to purchase Montana investments but that the total funds under its control far exceed the value of the Montana investments offered to them.

Board members suggested that the programs to aid young farmers and businessmen might better be achieved through direct appropriation or sale of revenue bonds rather than investment of state funds. The Board requested that if the legislature did decide to use coal tax trust funds or other state funds for subsidy or social programs that a body other than the Board of Investments be designated to administer these programs.

ECONOMIC THEORIES OF INVESTMENT

In considering how state funds could best be invested to aid certain sectors of the state's economy, the Committee also studied various economic theories of public investment. Papers prepared for the Alaska House Special Committee on the Permanent Fund detailed the schools of academic thought on the efficacy of public investment and its pitfalls.⁵

COMMITTEE PROPOSALS

After considering the discussion with the Board of Investments and theories of economic investment, the Committee decided to pursue four options designed to aid young farmers and businessmen.

1) Farm loan programs.

The Committee expressed interest in a program, patterned after the Housing Act of 1975, to sell revenue bonds to finance young farmers' purchase of farmland. To assess the need and potentials for this program, the Committee reviewed recent studies completed at Montana State University on the cost of beginning a farm or ranching operation and the difficulties young farmers experience in repaying loans under current market prices for farm produce. The Committee also asked representatives of both the state and federal farm ownership loan programs to testify.

The Montana Department of Agriculture has a small farm/ranch ownership loan program, funded through the former Federal Rural Rehabilitation Corporation's assets. Through careful management, the department has built this fund to \$1,388,000 which is loaned to farmers, ranchers, and rural youth through five programs. Currently the department has \$717,000 invested in farm/ranch ownership loans. Because of its limited funding, the department often participates with the Federal Farmers Home Administration Program in making ownership loans. Department staff testified that the demand for farm real estate loans far exceeds the resources of either the state or the federal programs presently available and supported the use of the coal tax funds for this purpose.⁶

The State Director of the Farmers Home Administration echoed these sentiments. While FmHA will make 146 farm ownership loans totalling \$9.5 million in 1978, over 225 qualified borrowers desiring \$15.5 million in loans will have to be turned away until additional funding is received. At present, applicants must wait 18 to 24 months for a loan. He said that FmHA would welcome state participation in the program.

FmHA regulations allow a participating agency to take a first mortgage on the property. The state's funds would thus be guaranteed by a first lien on all the property. FmHA would take a junior lien for the security on its part of the loan. FmHA staff said the state could set its own interest rate on these loans; current rates set by FmHA participators range from 8%-11%. FmHA would also provide most of the necessary loan servicing. The staff also emphasized the safety of the investment: less than 15% of the farm ownership borrowers a year fail to meet scheduled payments and only once in the past 25 years has a loan default resulted in a write-off.⁷

At the July 14, 1978 meeting, Committee members discussed whether aid to farmers could best be achieved by farm ownership loans or subsidized farm operating loans in bad years. Members also queried whether a state bank, in which all state funds were invested, may not be a better vehicle for such programs than revenue bonds.

After discussion, the Committee considered a bill to establish a Montana land bank (Bill III) at its September meeting. This bill would authorize the State Board of Land Commissioners to purchase agricultural land, lease it to qualified Montana citizens, and eventually sell it to lessees. The program would be funded by general obligation bonds, backed by the income from the coal tax trust fund and the full faith and credit of the state.

The Committee presents this bill to the legislature without recommendation. Members felt they had insufficient time to consider the bill fully at the Committee's September meeting. Moreover, the language in the bill requires further refinement before introduction and is currently being reviewed by bond counsel and other groups. As this report is being prepared, the Committee has plans to meet on January 3 to consider the revised bill more fully and formulate its recommendation on the bill.

The Committee voted to recommend a joint resolution (JR II) urging the Board of Investments to invest some of the funds under its management in farm ownership participation loans with the Farmers Home Administration.

2) Venture capital loans to businesses.

The Committee explored the possibility of making direct loans to small businesses. Recognizing that direct loans to businesses are not permitted under the prudent man rule, the Committee gathered data on various funding mechanisms.

Three witnesses appeared before the Committee to detail the need for investment capital in the state and make suggestions on how a state program could be constructed. The president of the Montana Manufacturers Association said manufacturers in Montana needed help in three major areas: 1) marketing their products; 2) financing beginning or expanding businesses; and 3) technical assistance to new companies. The Director of the Montana Economic Research and Development Institute urged the Committee to use the coal tax revenues to finance agriculture and new product development in the state, thus ensuring that depletion of a nonrenewable resource spurs more stable types of development. He suggested, however, that any such program be structured to: 1) make maximum use of existing financial institutions and organizations to encourage sound growth;

and 2) keep the programs outside the constraints of state government. The owner of a solar engineering firm detailed the opportunities for use of the coal tax moneys in developing technically capable solar and other alternative energy installations: 1) grants for research; 2) loan guaranty programs for producers or purchasers of alternative energy systems; and 3) low interest loans to local government units for alternative energy projects.

The Committee also studied direct loan programs operated in three states: Mississippi's Economic Development Corporation, Vermont's Industrial Development Authority, and Connecticut's Product Development Corporation. Committee members expressed particular interest in Connecticut's program, which is administered by a nonprofit public corporation initially funded by the state. This corporation provides 60% of the development costs of a new product in return for certain royalty rights. If the product is successful, the corporation uses the royalties to fund another venture. The corporation is designed to be self-supporting and eventually repay its initial appropriation from the state. The British National Research and Development Council, on which the Connecticut program was modeled, has found in its 30-year history that about 20% of all projects funded return profits. This has been enough to make the Council meet its losses on unsuccessful projects and become self-sustaining.

Data on private investment firms supplied to the Committee indicated that 65.4% of the companies financed show a profit and 19.3% fail.⁸

At its September meeting the Committee voted to recommend a bill to establish a Montana equity capital corporation to aid Montana businesses in developing new products (Bill II). This bill would create a private corporation designed to invest in Montana businesses and products in return for royalty rights. The program would be funded by an appropriation from the income produced by the coal tax trust fund.

3) Loan guaranty program.

The Committee considered establishing a program in which either the coal tax trust fund itself or the income from the coal tax trust fund could be used to guarantee loans made by private financial institutions to Montana businessmen and farmers. The loan guaranty programs in 15 other states were reviewed.

In reviewing loan guaranty programs, the Committee became interested in the federal Small Business Administration guaranteed loan program, since this program offered Montana businessmen important financial aid in establishing or expanding in existing business and provided secure investment for state funds.

The Committee requested the District Director of the Small Business Administration to appear before the Committee to describe his program. He affirmed that SBA loans are made through local banks and that the SBA absolutely guarantees 90% of any such loan. Most banks sell the guaranteed portion of the loan to secondary markets. The District Director noted that the number of SBA loans in Montana could be increased if the Board of Investments bought more SBA guaranteed loans. He said that the administrative costs of such loans to the secondary market were small since the SBA did all the work. Further, these loans offered a higher interest rate than most comparable investments. The District Director asserted that the state of Montana would benefit doubly by investing state funds in SBA guaranteed loans: 1) more SBA funds could be used in the state; and 2) the state could reap high interest return from buying SBA guarantees.⁹

The Board's Investment Officer expressed some reservations to the Committee on SBA guaranteed loans: 1) SBA loans have no prepayment clauses, which may force the Board to reinvest funds when the market is poor; 2) the rate of interest on SBA loans is lower than on comparable investments; 3) very few SBA loans are offered to the Board because a national market for them exists; and 4) selling SBA loans to these national markets imports capital into Montana.¹⁰

The Committee voted to recommend a resolution urging the Board of Investments to actively seek SBA guaranteed loans and to simplify its procedures in regard to this type of investment (JR I).

4) Lower interest requirements for investment in Montana.

The Committee also gathered information on the possibility of increasing investment of state funds in Montana by requiring the Board of Investments to choose an in-state investment if the rate of return were 1% or less below that of comparable out-of-state investments.

The Committee considered the fact that most of the investments listed as permissible in section 79-310 [17-6-211] are out-of-state investments. Corporate bonds, the type of security in which the Board has invested the bulk of the funds, are issued in Montana but in insufficient amounts to absorb much of the investment funds.

However, members questioned whether the Board actively sought out Montana investments.

The Board voted at its September meeting to recommend a bill requiring the Board to invest in Montana securities even if they returned 1% less interest than comparable investments, if the investment could be made without lessening the quality

of the investment or without interfering with the need for liquidity in certain funds.

OTHER OPTIONS

The Committee considered several other topics but decided to take no further action on them.

State Banks

The Committee explored the possibility of a state-owned bank to: 1) make low-interest ownership loans to farmers and small businessmen; 2) invest the coal tax trust fund in Montana; and 3) furnish a state-funded operating loan program to farmers during periods of poor agricultural prices or natural disasters.

The Committee studied North Dakota's state bank, with emphasis on the bank's Small Business Administration loan participation program, its direct farm ownership loans, and its home loan programs. The Committee also gathered information on proposed state bank bills in California, Oregon, and New York. Testimony from extensive hearings in California reflected the views of bankers, businessmen, community organizers, and planners on this topic. The Committee also reviewed a survey of Oregon bankers on their opinions toward a state bank.

After some discussion, the Committee decided not to pursue the concept further.

HOUSING

In beginning its study of ways to promote investment in housing, the Committee thoroughly studied the state's existing housing program.

The Montana Housing Act of 1975 established a program to increase the supply of housing for lower income Montanans by originating, purchasing, or participating in mortgage loans. The program is financed by the sale of revenue bonds, not to exceed \$75 million.

The program is administered by the Board of Housing, a citizen board appointed by the Governor for varying terms. The Board is allocated to the Department of Administration, which provides its staff. To date, the Board has limited its activities to mortgage repurchasing, buying mortgage loans made by financial institutions meeting the Board's criteria. To be eligible, the loan must: 1) have been made to a family with a maximum adjusted gross annual income of

\$16,000 or less, and 2) be insured by the Veterans Administration or the Federal Housing Administration. Under this program, the Board has issued \$75 million in bonds, purchasing over 1,600 mortgages on single-family dwellings and the mortgage on a 134-unit multiple-family dwelling.

In early 1977, questions arose on the process by which the Montana Housing Board was distributing its funds. At the request of a Committee member, the Coal Tax Oversight Committee held a public hearing in Billings to discuss these criticisms. The Committee member argued that it should thoroughly examine the state's existing housing program before considering new programs, under the charge made in SJR 2.

At the hearing, most witnesses praised the program, saying that it met an important need in the state. Many of those testifying urged the legislature to expand the program. However, several had complaints on financial institutions' recommitment of Board funds to real estate firms and other Board policies.¹¹

As a result of the hearing, the Committee made several suggestions to the Housing Board on how its program could be improved. The Board adopted some of these suggestions. However, the Committee's review satisfied members that the state's existing housing program was functioning well and was capable of meeting Montana lower income citizens' need for housing. Therefore, the Committee took no further action on SJR 2.

OVERSIGHT FUNCTIONS

By statute, the Coal Tax Oversight Committee is required to monitor the programs funded by coal tax revenue. An overview of its monitoring activities is presented below.

COAL TAX PROTEST

The Committee has, of course, watched the progress of the suit filed against the coal severance tax with great attention.

On January 30, 1978, after discussing the basis for the suit with the Governor's attorney, the Committee unanimously adopted a resolution affirming its support for the tax and detailing the urgent need for it.

The Committee has conferred with the Attorney General, the Governor, and their staffs on the matter. Two members have been appointed to a special liaison committee to work with these officials on the suit.

COAL BOARD

A key element of Montana's coal severance tax program, the local impact assistance program, receives 12.7% of the coal tax revenues for grants to local governments to assist them in providing "governmental services and facilities which are needed as a direct result of coal development." The Coal Board, a citizen board appointed by the Governor, awards these grants based on statutory criteria and guidelines. Since the Committee's last report, the Board has granted \$5,792,939 in local impact funds to 14 different local governments.

The Committee has devoted much of its time to remaining informed about the local impact assistance program and advising the Coal Board.

Early in the interim, the Committee met jointly with the Board to discuss changes in the program caused by HB 145 and SB 44 passed in the 1977 session. The Committee adopted resolutions defining the terms in HB 145 and detailing the legislative intent of SB 44. The Committee also discussed possible refinements in the statutes establishing the local impact program and requested a study of these issues by the Departments of Community Affairs and State Lands.

In January, the Committee again met jointly with the Board to discuss questions some legislators had raised about the criteria and procedures for grants. After thoroughly

reviewing the grants made and discussing several in depth, the Committee issued a resolution reinstating its confidence in the Board and commending them for diligence and hard work.

When the suit challenging the coal severance tax was filed, the Committee discussed the status of the local impact program and its financial position with the Board's chairman and passed a resolution urging the Coal Board to "proceed with the duties assigned to them without regard to any protest or law suit filed by the coal companies."

RENEWABLE RESOURCES PROGRAM

The Renewable Resources Development program receives 1.875% of the coal tax revenues for grants and loans for the development of renewable natural resources to replace the nonrenewable resource -- coal -- being depleted.

During the last interim, the Committee expressed concern over the direction and implementation of that portion of the program allowing loans to private individuals for renewable resources projects. In August, 1977, the Montana Supreme Court declared that portion of the program unconstitutional. The money earmarked for the program is accumulating in the account.

The remaining portion of the program -- loans and grants to local governments -- has been proceeding slowly. The legislature, which must approve all such loans and grants, made two of the grants contingent on receipt of additional funding from other sources. Difficulties in receiving these funds have delayed the projects. The Department of Natural Resources and Conservation, which administers this program, is evaluating project applications for the legislature's action in the 1979 session.

ALTERNATIVE ENERGY PROGRAM

The Alternative Energy Research Development and Demonstration program receives 1.875% of the coal tax revenue to award grants enabling recipients "to research, develop, or demonstrate alternative renewable energy sources." During this interim, the Department of Natural Resources and Conservation, which administers the program, has granted \$710,296 to fund 52 projects. Of these, 29 were for solar energy-related projects, 5 wind-related, 3 geothermal, 2 wood energy-related, 3 biomass-related, and 10 involving other energy sources.

The Committee has followed the program closely, reviewing its direction and individual grants at three meetings.

Members also visited the grant projects in their communities to evaluate their effectiveness. The Committee has been concerned about the preponderance of grants for solar energy projects and for demonstration rather than research projects. Members expressed fears that the grants may be duplicating federally funded projects or demonstrating what is already widely known.

With these concerns in mind, the Committee passed the following resolution:

Be it resolved that the motion passed by this Committee on 14 July 1978 be revoked and rescinded.

Be it further resolved that all grants from the Alternative Energy Research and Demonstration Projects should be suspended until January 30, 1979, during which time the Department of Natural Resources and Conservation shall outline more specifically the goals and purposes of such grants including what is expected to be accomplished by such grants and that such specific goals and purposes be submitted to this Committee of the legislature for review with the understanding that all future grants will be awarded on the basis of these goals and purposes.

The Committee plans to meet January 3 to consider the Department's outline.

COAL AREA HIGHWAY IMPROVEMENT

Section 84-1319 [15-35-108] allocates 9.75% of the coal severance tax revenue to the coal area highway reconstruction program "to assist in the construction and reconstruction of designated portions of highways which serve the area affected by such large-scale development."

Since the creation of this program in 1975, the Committee has sought federal funds to match this state effort. The Committee has felt that the federal government should bear part of the cost of reconstructing these highways since much of the coal is federally owned and the demand for the coal originates outside the state. The Department of Highways estimates the cost of the program will be about \$70 million. The Committee hopes that this cost would be shared 74% federal, 26% state, the usual ratio for federal primary-secondary road construction. \$10.65 million has accumulated in this program's account to match federal funds should they become available.

Congress declined to grant the matching funds in 1976 and directed the U. S. Department of Transportation to make a study of coal transportation problems throughout the country.

When this study was released in January, 1978, the problems of passenger haul roads, such as Montana's, were not included. Although bills to furnish federal matching funds have been introduced in Congress this session, they have been defeated.

The Department of Highways has completed some of the planning for the highways in the coal area but has not expended the funds in anticipation of federal funds becoming available. Several projects in the area have been let but other highway funds have been used.

The funds in this account will not revert until June 30, 1981.

SITE ACQUISITION AND MAINTENANCE

Section 84-1319 [15-35-108] allocates 1.875% of the coal severance tax for the acquisition, operation, and maintenance of state parks, recreation areas, monuments, and historic sites.

In 1977, the legislature appropriated \$1,200,000 of these funds, accrued during the previous biennium, to the Department of Fish and Game for site acquisition. With these funds and matching private and federal funds, the department purchased a boat launching access in Miles City, land in Bannack State Park, an enlargement to Makoshika State Park in Glendive, Council Grove State monument in Missoula, and Rosebud Battlefield near Decker.

Other bills during the session appropriated from the coal severance tax fund to the department \$499,111 over the biennium to maintain and support the park program.

PRESERVATION OF WORKS OF ART IN THE CAPITOL

HB 799 appropriated \$50,000 to the Department of Administration from the coal tax funds for preservation and protection of the paintings, murals, and other works of art in the state capitol.

The department is using this appropriation to evaluate the condition of the works of art, determine what repair is necessary, and develop a list of priorities for an ongoing preservation program. The funds were not sufficient, department staff noted, for actual preservation of any art works.

COUNTY LAND PLANNING

During this biennium, 0.75% of the coal tax revenue, about \$581,000, was distributed to the 56 counties of the state for use in land planning. Under the revised distribution formula established in SB 44, each county received at least \$3,000. The remainder was distributed on the basis of land area and population. The grants to counties varied from \$3,517 to \$14,969 in FY 1978.

These funds were used for a wide variety of projects -- mapping, subdivision review, housing studies, solid waste management, sanitation planning, and others. The Local Planning Services Bureau of the Department of Community Affairs has worked with the counties to design and carry out projects complying with the legislative intent for the funds.

Section 82-3710 [90-1-108] provides that funds not expended by the county shall revert to the education trust fund. Two counties (Golden Valley and Petroleum) returned the entire amount of their funds and several other counties returned small amounts, for a total reversion of approximately \$30,877 since the program was initiated.¹²

NOTES

1. Montana Legislative Council, The Investment of Public Funds, December, 1964, p. 4.

2. May Adams Shattuck, "The Development of the Prudent Man Rule for Fiduciary Investment in the United States in the Twentieth Century" in Ohio State Law Journal, vol. 12, no. 4, pp. 491-521, 1951. Alec Stevenson, "Why the Prudent Man Rule" in Vanderbilt Law Review, vol. 7, pp. 24-92, 1953.

3. (a) Direct investment in a business. Since the 1840's the courts have ruled that direct investment in a trade or business is "excessively risky" (Nelligon v. Long, 70 N.E. 2d 175 [1946]). This applies to long-established businesses as well as untried enterprises (Butler v. Butler, 45 N.E. 426 [1896]); Sebree v. Rosen, 349 S.W. 2d 865 [1961]); etc.)

(b) Purchases of land for the purpose of resale (Will of Leonard, 230 N.W. 715 [1930]).

(c) Mortgages on property outside the state in which the trust is created (State v. Washburn, 34 Atl. 1034 [1896], etc.). (Although some courts have held certain such mortgages prudent investments.)

(d) Second or junior mortgages. The courts have held that although the value of the land may be much larger than the mortgages, the junior encumbrances cannot control the situation and the senior encumbrances may foreclose and cut the junior mortgage off. (In re Estate of Cook, 171 Atl. 730 [1934], etc.)

(e) Unsecured loans (Pew Trust, 158 A. 2d 552 [1960], etc.). However, corporate debentures and demand deposits, although sometimes unsecured, have been ruled prudent investments in many cases.

4. Board of Investments, 1975-1976 Fiscal Year Report, p. 1.

5. Dr. Arlon Trussing, Economic Considerations in Establishment of Alaska's Permanent Fund, University of Alaska, 1977. Dr. Belden Hull Daniels, Thinking About the Alaskan Permanent Fund: A Cautious Approach for Alaskan Policymakers, Harvard University, 1977. House and Special Committee on the Alaska Permanent Fund, Final Report: A Proposal for the Alaska Permanent Fund, 1977.

6. Testimony from Ralph Peck, Administrator of Centralized Services, Montana Department of Agriculture, 18 February 1978).

7. Letter from Dean Davidson, Chief of Farmer Programs, Montana State Office, Farmers Home Administration (9 May 1978). Testimony by Wally Edland, State Director, FmHA (19 May 1978).

8. Diebold Group, Inc., Venture Capital Investment Guarantee Study, U. S. Department of Commerce, 1974, pp. 25-27.

9. Testimony from Ottley Tschache, District Director, Small Business Administration (19 May 1978).

10. Testimony from James Howeth, Investment Officer, Investment Division, Department of Administration (19 May 1978).

11. Transcript of Board of Housing hearing (Billings) 16 September 1977.

12. Information from Mark Lindsay, Financial Bureau Chief, Centralized Services Division, Department of Community Affairs (5 September 1978).

APPENDIX I
FUNDS IN MONTANA'S UNIFIED INVESTMENT PROGRAM

Treasurer's Fund
Public Employees' Retirement System Fund
Teachers' Retirement System Fund
Trust and Legacy Fund
Workers' Compensation Fund
Long Range Building Fund
Social Security Fund
Common School Interest & Income Fund
Long Range Building Sinking Fund
Federal Revenue Sharing Fund
Coal Tax Trust Fund
Volunteer Fireman's Fund

Other Retirement Funds:

Highway Patrol Retirement Fund
Statewide Police Reserve Fund
Sheriffs' Retirement Fund
Game Wardens' Retirement Fund
Montana Judges' Retirement Fund

Various University Funds:

Experiment Station Fund
E.M.C. Trust Fund
M.C.M.S.T. Unexpended Plant Fund
M.S.U. Nacubo Fund
E.M.C. Current Designated Fund
AES Restricted Fund
M.S.U. Current Restricted Fund
M.S.U. Endowment Fund
M.S.U. Auxiliary Enterprises Fund
M.C.M.S.T. Current Restricted Fund
U.M. Field House Fund
E.M.C. Nacubo Agency Fund
U.M. Fund to Retire Debt
M.C.M.S.T. Endowment Fund
M.C.M.S.T. Loan Fund
N.M.C. Nacubo Agency Fund
M.C.M.S.T. Agency Fund
M.S.U. Unexpended Plant Fund
N.M.C. Current Designated Student Fund
N.M.C. Branch Station Fund
E.M.C. Auxiliary Enterprises Fund
M.S.C. Phys. Ed. Fund
N.M.C. Series B Fund
U.M. Swimming Pool Fund
M.C.M.S.T. Auxiliary Enterprises Fund
Experiment Station-Fertilizer Fund
M.C.M.S.T. Current Designated Fund
N.M.C. Endowment Fund
M.S.U. Current Designated Fund
Experiment Station-Agriculture Fund
N.M.C. Fund to Retire Debt

N.M.C. Restricted Fund
M.S.U. Student Housing Fund
U.M. Building Fund
N.M.C. Housing & Dining Fund

Livestock Funds:

Livestock Commission Fund
Livestock Board-Emergency Fund

Other Funds:

Highway Complex Headquarters Fund
Resource Indemnity Fund
Local Impact Fund
Trust Contractors' License Refund
Educational Trust Fund
Subsequent Injury Fund
Land & Resource Development Fund
Renewable Resources Dev. Fund
Coal Tax Park Fund
Montana Rural Rehab. Fund
Donable Property Fund
Wheat Research Fund
Occupational Disease Fund
Capitol Building Fund
Oil and Gas Fund
Board of Certification Fund
Water Well Fund
Cosmetology Board Fund
Sanitarians Registration Fund
T.R.S. Minnie Fullam Fund

Other STIP* Funds:

Fergus County Treasurer
Rosebud County Treasurer
City of Helena Parking Bond Proceeds
City of Helena
Culbertson Hospital Fund
City of Missoula
Stillwater County Treasurer
Lincoln County Treasurer
Great Falls Fire Dept. Relief Asso.
Missoula Fire Dept. Relief Assoc.
Billings Fire Dept. Relief Assoc.
Daniels County Treasurer
Missoula County Treasurer
City of Glendive
Town of Chester
Helena Fire Dept. Relief Assoc.
Bozeman Fire Dept. Relief Assoc.
Kalispell Fire Dept. Relief Assoc.
Yellowstone County Treasurer

(APPENDIX I Continued)

(Other STIP* continued)

Sanders County Treasurer
City of Great Falls
Butte Fire Dept. Relief Assoc.
City of Scobey
Miles City Fire Dept. Relief Assoc.
City of Butte
Glendive Fire Dept. Relief Assoc.
Lake County Treasurer
Liberty County Treasurer
City of Kalispell
Hill County Treasurer
Havre Fire Dept. Relief Assoc.
Powell County Treasurer
Roosevelt County Treasurer
Dawson County Treasurer
Lewistown Fire Dept. Relief Assoc.
Park County Treasurer
Sheridan County Treasurer
Anaconda Fire Dept. Relief Assoc.
Livingston Fire Dept. Relief Assoc.
Beaverhead County Treasurer
Granite County Treasurer
Meagher County Treasurer
Broadwater County Treasurer
Valley County Treasurer
Lewis & Clark County Treasurer
Madison County Treasurer
Ravalli County Treasurer
Teton County Treasurer
City of Choteau
Choteau Schools Student Activity Fund
Montana State University
University of Montana
Eastern Montana College
Montana College of Mineral Science & Technology
City of Lewistown
Northern Montana College
Lewistown Police Officers Ret. Fund
Helena Police Officers Ret. Fund
Mineral County Treasurer

*Short-Term Investment Pool

APPENDIX II
TYPE OF SECURITIES IN WHICH
STATE FUNDS ARE INVESTED

	<u>FISCAL 76-77</u>		<u>FISCAL 77-78</u>	
	% of Total	Amount *	% of Total	Amount *
Corporate Bonds	43.6	\$308,429,828	44.6	\$355,544,413
U.S. Government Securities	27.2	192,364,852	25.4	201,910,017
MT. Certificates of Deposit	8.9	62,292,800	8.9	71,250,000
MT. Mortgages	7.3	51,787,594	7.3	57,889,144
Canadian Obligations	5.7	40,237,818	5.8	46,004,600
Bankers' Acceptances	1.0	7,430,660	3.9	30,877,183
Common Stock	2.8	19,758,976	3.1	25,007,204
Commercial Paper	3.4	23,879,660	0.8	6,463,821
Other	0.2	1,464,100	0.2	1,366,790
Total	<u>100.0</u>	<u>\$707,646,288</u>	<u>100.0</u>	<u>\$796,313,172</u>

Permanent Coal Trust

APPENDIX III

Security No. INVESTMENT OF THE COAL TAX TRUST FUND (AS OF SEPTEMBER 30, 1978)

DATE	QUANTITY	COST	UNIT COST	BOOK	INTEREST RATE	MATURITY DATE
4-059165-BD Baltimore Gas & Electric 07/06/78	300,000.00	300,000.00	100.00	300,000.00	9.375	07/01/08
TOTAL	300,000.00	300,000.00		300,000.00		
4-78149-CL Bell Telephone of Canada 01/17/78	400,000.00	400,000.00	100.00	400,000.00	9.000	01/15/08
TOTAL	400,000.00	400,000.00		400,000.00		
4-061721-AR Beneficial Corp. 02/16/78 02/16/78	200,000.00 100,000.00	200,000.00 100,000.00	100.00 100.00	200,000.00 100,000.00	8.350	02/15/88
TOTAL	300,000.00	300,000.00		300,000.00		
4-226822-AC Crocker National Corp. 12/20/77	500,000.00	497,500.00	99.50	497,578.22	8.600	12/01/02
TOTAL	500,000.00	497,500.00		497,578.22		
4-252741-AF Diamond Shamrock Corp. 04/05/78	500,000.00	490,000.00	98.00	490,163.02	8.500	04/01/08
TOTAL	500,000.00	490,000.00	98.00	490,163.02		
4-280543-AM Dow Chemical Corp. 03/02/78	200,000.00	198,400.00	99.20	198,431.01	8.625	02/15/08
TOTAL	200,000.00	198,400.00		198,431.01		
4-345397-BK Ford Motor Credit Notes 05/03/78	200,000.00	199,400.00	99.70	199,441.15	8.375	05/01/84
TOTAL	200,000.00	199,400.00		199,441.15		

DATE	QUANTITY	COST	UNIT COST	BOOK	INTEREST RATE	MATURITY DATE
4-371046-AZ General Telephone Co. of California 04/12/78	200,000.00	197,410.00	98.71	197,450.57	8.875	04/01/08
TOTAL	200,000.00	197,410.00		197,450.57		
4-451380-AR Idaho Power 08/17/78	500,000.00	500,000.00	100.00	500,000.00	9.000	08/15/08
TOTAL	500,000.00	500,000.00		500,000.00		
4-624285-AV Mountain States Tel. & Tel. 04/05/78	500,000.00	495,000.00	99.00	495,061.13	8.625	04/01/18
TOTAL	500,000.00	495,000.00		495,061.13		
4-845743-AQ Southwestern Public Service 03/15/78	150,000.00	150,000.00	100.00	150,000.00	8.750	03/01/08
TOTAL	150,000.00	150,000.00		150,000.00		
4-881694-AD Texaco, Inc. 03/09/78	200,000.00	197,250.00	98.63	197,304.99	8.500	04/01/06
TOTAL	200,000.00	197,250.00		197,304.99		
4-917508-BB Utah Power & Light Co. 06/01/78	300,000.00	300,000.00	100.00	300,000.00	9.125	05/01/08
TOTAL	300,000.00	300,000.00		300,000.00		
4-927804-BJ Virginia Electric Power 07/27/78	200,000.00	200,000.00	100.00	200,000.00	9.625	07/01/08
TOTAL	200,000.00	200,000.00		200,000.00		
TOTAL COMPANY	5,950,000.00	5,923,710.00		5,924,180.09		

<u>DATE</u>	<u>QUANTITY</u>	<u>COST</u>	<u>UNIT COST</u>	<u>BOOK</u>	<u>INTEREST RATE</u>	<u>MATURITY DATE</u>
7-313568-GV Federal National Mortgage Association 10/11/77	500,000.00	500,000.00	100.00	500,000.00	7.500	10/13/87
TOTAL	500,000.00	500,000.00		500,000.00		
7-313586-JH Federal National Mortgage Association 09/11/78	500,000.00	498,750.00	99.75	498,750.00	8.550	09/12/88
TOTAL	500,000.00	498,750.00		498,750.00		
7-844376-AC US GG Ship Financing Bonds (LNG ARIES) 12/23/77	500,000.00	500,000.00	100.00	500,000.00	8.200	12/13/02
TOTAL	500,000.00	500,000.00		500,000.00		
TOTAL GOVERNMENT	1,500,000.00	1,498,750.00		1,498,750.00		

Short-Term Investment Pool

2,438 Unites	2,495,000.00
TOTAL	2,495,000.00
TOTAL INVESTED	8,418,710.00

BILL I

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH PREFERENCE
5 FOR INVESTMENT OF CERTAIN STATE FUNDS IN MONTANA
6 SECURITIES."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 NEW SECTION Preference for Montana investments. The
10 board of investments shall invest to the maximum extent
11 possible, without jeopardizing the quality of the
12 investments or the need for liquidity, the funds enumerated
13 in subsections (1), (3), (4), (5), and (6) of 17-6-203,
14 excluding any retirement funds, in securities issued by
15 Montana corporations and political subdivisions of the
16 state, even if the investment will produce up to 1% less
17 annual income than investment in comparable out-of-state
18 bonds and securities.

-End-

BILL II

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE THE MONTANA
5 PRODUCT DEVELOPMENT CORPORATION, A PUBLIC CORPORATION TO
6 PROVIDE FINANCIAL AID FOR PRODUCTS AND INVENTIONS AND TO
7 APPROPRIATE \$2 MILLION FOR THE OPERATION OF THE CORPORATION
8 FOR THE BIENNium ENDING JUNE 30, 1981."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Short title. This [act] shall be known and
12 may be cited as the "Montana Product Development Corporation
13 Act".

14 Section 2. Legislative findings and declaration of
15 purpose. (1) The legislature finds that there exists in this
16 state a growing need for commercial development to provide
17 and maintain job opportunities and tax revenue.

18 (2) The legislature further finds that:

19 (a) the assistance and encouragement of commercial
20 development is an important function of the state;

21 (b) the availability of financial assistance is an
22 important inducement to commercial enterprises to locate or
23 remain in the state;

24 (c) there exists in this state a serious shortage of
25 venture capital to promote the commercial development of

1 products and inventions;

2 (d) the shortage in venture capital has resulted and
3 will result in a serious decrease in the development of new
4 business enterprises and job opportunities in this state;

5 (e) by providing financial assistance for the
6 development of products and inventions the state will assist
7 in the creation of new business enterprises and job
8 opportunities.

9 (3) The legislature further finds that the assistance
10 and encouragement of new business enterprises and job
11 opportunities will benefit the state as a whole and is
12 therefore a public purpose.

13 (4) It is the purpose of this [act] to create a
14 nonprofit public corporation that will provide financial
15 assistance to stimulate the development of products and
16 inventions in this state.

17 Section 3. Definitions. As used in this [act] the
18 following definitions apply:

19 (1) "Board" means the board of directors of the
20 Montana product development corporation created by [section
21 5].

22 (2) "Corporation" means the Montana product
23 development corporation created by [section 4].

24 (3) "Financial aid" means providing risk capital to
25 persons in the commercial development of products and

1 inventions.

2 (4) "Invention" means any new device, process, or
3 technique without regard to whether a patent has or could be
4 granted.

5 (5) "Person" means any individual, partnership,
6 corporation, association, or joint venture carrying on
7 business or proposing to carry on business in this state.
8 This term does not mean a governmental organization.

9 (6) "Product" means any device, technique, or process
10 that is or may be developed commercially. The term does not
11 apply to pure research but to products, techniques, or
12 processes that have advanced beyond the theoretical stage
13 and are readily capable of being reduced to practice.

14 (7) "Venture" means a contractual arrangement with any
15 person whereby the corporation obtains rights in a product
16 or invention or the proceeds therefrom or equity in the
17 business organization developing the product or invention
18 for granting financial aid to such person.

19 Section 4. Creation of the Montana product development
20 corporation. There is created a corporate body known as the
21 Montana product development corporation. The corporation is
22 a public nonprofit corporation and has a legal existence
23 independent and separate from the state.

24 Section 5. Board of directors of the Montana product
25 development corporation -- appointment -- qualifications --

1 allocation. (1) There is a board of directors of the
2 corporation.

3 (2) The first board shall be appointed in the
4 following manner:

5 (a) The legislative coal tax oversight committee shall
6 select a committee to nominate individuals for the board.
7 The nominating committee shall consist of:

8 (i) one individual with experience in manufacturing;

9 (ii) one individual with experience in finance and
10 credit evaluation;

11 (iii) one individual with experience in small business;

12 (iv) one individual with experience in local
13 development corporations; and

14 (v) one representative of the public.

15 (b) The nominating committee shall submit a list of 15
16 names of residents of this state to the governor. The
17 governor shall select five persons from the list as
18 directors of the corporation as follows:

19 (i) one individual with experience in manufacturing;

20 (ii) one individual with experience in finance and
21 credit evaluation;

22 (iii) one individual with experience in small business;

23 (iv) one individual with experience in local
24 development corporations; and

25 (v) one representative of the public.

1 (3) The first board shall adopt bylaws governing their
2 terms of office and the method of appointment of future
3 members of the board. Future board members shall be
4 appointed by the board subject to senate confirmation. A
5 member appointed by the board when the senate is not in
6 session may serve on the board with all powers of a regular
7 member until the senate confirms or rejects the appointment.

8 (4) To be eligible for membership on the board an
9 individual must have a favorable reputation for skill,
10 knowledge, and experience in technological development or
11 investments.

12 (5) The board is allocated to the department of
13 administration for administrative purposes only as
14 prescribed in 2-15-121. The board may hire its own
15 personnel, seek and receive federal and private funds in the
16 name of the corporation, and determine all matters of policy
17 concerning the use of its budget.

18 Section 6. Compensation of board members. (1) Each
19 board member is entitled to receive from the corporation \$25
20 for each day in which the board member is actually and
21 necessarily engaged in the performance of board duties. Each
22 board member is also entitled to be reimbursed for travel
23 expenses incurred while in the performance of board duties.
24 The board shall adopt bylaws governing the amount and method
25 of computing travel expenses.

1 (2) Members of the board are not entitled to receive a
2 salary and may not profit from the activities of the
3 corporation.

4 Section 7. Financial aid to board members prohibited.
5 A member of the board of directors, his family, or business
6 associates may not receive financial aid from the
7 corporation.

8 Section 8. Conflict of interests. (1) Upon appointment
9 and during term of office a board member must declare to the
10 board in writing any financial or other interest that might
11 conflict with his membership on the board.

12 (2) If there is a conflict, the board may require him
13 to abstain from decisions resulting in a conflict or to
14 resign from the board.

15 (3) A loan or contract of the corporation that is
16 otherwise valid is not invalid because of a personal
17 interest of a board member if the interest is declared and
18 the board member abstains from decisions pertaining to the
19 loan or contract.

20 Section 9. Records of corporation. (1) The corporation
21 shall keep complete financial records and minutes of
22 meetings of the board.

23 (2) Records of the corporation shall be available to
24 the governor and the legislature.

25 (3) The board shall maintain the following records

1 which are available for public inspection:

2 (a) the names of the persons receiving financial aid
3 from the corporation;

4 (b) the nature of the business of each person
5 receiving financial aid from the corporation;

6 (c) the amount of financial aid received by each
7 person; and

8 (d) the royalties, equity, or other rights received by
9 the corporation and the conditions imposed on the granting
10 of financial aid to each person.

11 (4) The board shall adopt bylaws to provide for
12 confidentiality of information necessary to protect the
13 legitimate business interests of a person receiving
14 financial aid from the corporation.

15 Section 10. Annual audit. Annually, the legislative
16 auditor shall audit the corporation's financial records.

17 Section 11. Executive director -- appointment --
18 qualifications -- salary. (1) There is an executive director
19 of the corporation.

20 (2) The executive director is appointed by the board
21 and may not be a member of the board.

22 (3) To be eligible for appointment as executive
23 director an individual must have the skill, knowledge, and
24 ability to manage the corporation and at least 5 years'
25 experience in a related product development organization.

1 (4) The executive director may not have any financial
2 or business interests that might conflict with the
3 management of the corporation.

4 (5) The executive director is entitled to receive a
5 salary to be determined by the board.

6 Section 12. Purpose of the corporation. The purpose of
7 the corporation is to stimulate and encourage the
8 development of products and inventions within Montana by
9 providing financial aid to persons for commercial
10 development of products and inventions in situations for
11 which financial aid would not otherwise be reasonably
12 available from commercial sources. The corporation will be
13 perpetual through the use of funds from successful ventures.

14 Section 13. Powers of the corporation. In order to
15 effectuate its purpose, the corporation may:

- 16 (1) continue to exist perpetually;
17 (2) sue and be sued in its corporate name;
18 (3) adopt a corporate seal that may be altered at
19 pleasure and use the same by reproducing it in any manner;
20 (4) enter into venture agreements with persons doing
21 business in Montana, upon terms and conditions as are
22 consistent with the purposes of the corporation for the
23 advancement of financial aid to persons to develop specific
24 products and inventions;
25 (5) receive and accept aid or other contributions from

1 any source of money, property, labor, or other things of
2 value, to be used to carry out the purposes of the
3 corporation, subject to the conditions upon which the aid
4 and contributions may be made, including gifts or grants
5 from any department or agency of the United States or the
6 state;

7 (6) purchase, lease, or otherwise acquire, own, hold,
8 improve, use, or otherwise deal with real and personal
9 property or any interest therein when necessary to further
10 the purposes of the corporation;

11 (7) hold patents, copyrights, trademarks, or any other
12 evidences of protection or exclusivity as to any products or
13 inventions issued under the laws of the United States or any
14 state or nation;

15 (8) invest any funds not needed for immediate use or
16 disbursement in investments permissible for funds from the
17 state pooled investment fund under the provisions of
18 17-6-211;

19 (9) make and enter into contracts and agreements
20 necessary or incidental to the performance of its duties and
21 the execution of its powers;

22 (10) employ assistants, agents, and other employees as
23 may be necessary to carry out the purposes of the
24 corporation;

25 (11) consent to any termination, modification,

1 forgiveness, or other change of any term of any contractual
2 right, payment, royalty, contract, or agreement of any kind
3 to which the corporation is a party;

4 (12) borrow money and issue secured and unsecured
5 evidence of indebtedness for a corporate purpose or fund and
6 refund, pay, or discharge outstanding obligations and enter
7 into agreements and contracts concerning these obligations;

8 (13) acquire, hold, and dispose of stocks, memberships,
9 contracts, bonds, or other interests in another corporation
10 or legal entity and exercise the powers or rights in
11 connection with these interests that are provided in
12 contracts or agreements that are allowed by law concerning
13 the satisfaction of debts;

14 (14) make and alter by-laws, consistent with this [act]
15 or with other laws of this state, for the administration and
16 regulation of affairs of the corporation;

17 (15) do what is necessary to carry out the powers
18 granted by this [act] or other laws of this state or the
19 laws or regulations of the federal government.

20 Section 14. Applications for financial aid. (1)
21 Applications for financial assistance must be made through
22 the executive director of the corporation. The executive
23 director shall forward each application to the staff of the
24 corporation for an investigation and report concerning the
25 advisability of approving the proposed financial aid.

(2) The investigation and report must include but are not limited to facts concerning the following:

(a) the history of the applicant;

(b) the standard of wages paid by the applicant;

(c) the job opportunities that would result from the development of the applicant's product or invention;

(d) the stability of employment that would result from development of the applicant's product or invention;

(e) the past and present financial condition of the applicant;

(f) the present and future markets and prospects of the product or invention;

(g) the integrity of the management of the applicant's business as well as the feasibility of the proposed product or invention;

(h) the environmental pollution that may result from the development of the product or invention;

(i) whether the product or invention would be labor intensive or capital intensive; and

(j) whether the product or invention, if marketed commercially, would be in direct competition with an existing business operating in this state.

(3) After consideration of the report and any other action considered appropriate, the board shall approve or deny the application. The applicant shall be promptly

1 notified of the board's decision.

2 (4) The corporation shall enter into ventures that
3 will return adequate funds to allow the corporation to
4 continue to operate without additional appropriations beyond
5 those contemplated by [section 15].

6 Section 15. Appropriation. (1) There is appropriated
7 to the corporation from the income and interest of the coal
8 tax trust fund created by Article IX, section 5, of the
9 Montana constitution \$2 million for the biennium ending June
10 30, 1981.

11 (2) The money appropriated to the corporation by this
12 section is to be used by the board for purposes authorized
13 by this [act].

14 (3) Ten percent of all money received by the
15 corporation as a result of venture agreements shall be
16 returned to the state general fund until the corporation has
17 paid back the amount appropriated to it by this section.

18 (4) After all money appropriated to the corporation by
19 this section has been returned to the state general fund,
20 all money received by the corporation may be used for
21 purposes authorized by this [act].

22 (5) A similar appropriation from the interest and
23 income of the coal tax trust fund may be considered for the
24 next four bienniums. Requests for additional appropriations
25 in excess of \$2 million for the next four bienniums may not

1 be made by the corporation.

2 Section 16. Powers to be interpreted broadly. The
3 powers enumerated in this [act] shall be interpreted broadly
4 to effectuate the purposes of the corporation and may not be
5 construed as a limitation of powers.

6 Section 17. Severability. If a part of this act is
7 invalid, all valid parts that are severable from the invalid
8 part remain in effect. If a part of this act is invalid in
9 one or more of its applications, the part remains in effect
10 in all valid applications that are severable from the
11 invalid applications.

12 Section 18. Codification. The code commissioner shall
13 codify [sections 4 and 5 of this act] in Title 2, chapter
14 15, part 10, MCA.

-End-

BILL III

1 BILL NO.

2 INTRODUCED BY _____

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE THE MONTANA
5 HOMESTEAD LAND PROGRAM FOR THE PURPOSE OF ACQUISITION,
6 LEASE, AND EVENTUAL SALE OF AGRICULTURAL LAND, TO
7 APPROPRIATE FUNDS FOR THE EXPENSES OF THE PROGRAM; AND
8 AMENDING SECTION 77-1-202, MCA."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 NEW SECTION. Section 1. This [act] may be cited as
12 the "Montana Homestead Land Act".

13 NEW SECTION. Section 2. Legislative findings. The
14 legislature finds that the rapidly increasing cost of
15 agricultural land is preventing many Montanans from becoming
16 farmers and ranchers. In consequence, Montana's farmland is
17 being purchased by corporations and foreign investors and
18 Montana's farmers and ranchers are rapidly becoming hired
19 hands. Recognizing the value of family farms to the
20 economic, social, and political well-being of the state, the
21 legislature hereby establishes a program for the state's
22 acquisition of agricultural land and its lease and eventual
23 sale to eligible Montana citizens. In the belief that
24 increasing the economic opportunities available to Montanans
25 and preserving the family farm are public purposes, the

1 legislature proposes to fund this program by general
2 obligation bonds, backed by income from the constitutional
3 coal tax trust fund.

4 NEW SECTION. Section 3. Definitions. (1) As used in
5 this [act], the following definitions apply:

6 (a) "Agricultural land" means land actively devoted to
7 agricultural use as defined in 15-7-202.

8 (b) "Board" means the board of land commissioners
9 established in Article X, section 4, of the Montana
10 constitution, which serves as the Montana homestead board
11 for the purposes of this [act].

12 (c) "Conveyance" means an instrument in writing by
13 which any estate or interest in real property is created,
14 alienated, mortgaged, or encumbered or by which the title to
15 real property may be affected, except wills and conveyances
16 ordered by the court in constructive or resulting trusts.

17 (d) "Department" means the department of state lands.

18 (e) "Homestead land" means land acquired by the board
19 under the provisions of this [act].

20 (f) "Owner" means any individual, partnership, joint
21 venture, association, or corporation owning agricultural
22 land.

23 (2) References throughout this [act] to the board
24 apply only to the board of land commissioners acting in its
25 capacity as the Montana homestead board. References

1 throughout this [act] to the board's property, revenues, or
2 assets apply only to property, revenues, and assets
3 generated by the Montana homestead program, not those owed
4 or generated by any other program or property over which the
5 board of land commissioners exercises general authority,
6 direction, and control.

7 Section 4. Section 77-1-202, MCA, is amended to read:

8 "77-1-202. Powers and duties of board. (1) The board
9 shall exercise general authority, direction, and control
10 over the care, management, and disposition of state lands
11 and, subject to the investment authority of the board of
12 investments, the funds arising from the leasing, use, sale,
13 and disposition of those lands or otherwise coming under its
14 administration. In the exercise of these powers, the guiding
15 rule and principle is that these lands and funds are held in
16 trust for the support of education and for the attainment of
17 other worthy objects helpful to the well-being of the people
18 of this state. The board shall administer this trust to
19 secure the largest measure of legitimate and reasonable
20 advantage to the state.

21 ~~(2) The board shall also serve as the Montana~~
22 ~~homestead board, whose powers are enumerated in [section~~
23 ~~5]."~~

24 NEW SECTION. Section 5. Homestead board -- general
25 powers. The board may:

- 1 (1) retain professional consultants and advisors;
- 2 (2) rely on the department's staff in its daily
- 3 functions;
- 4 (3) adopt rules governing its procedures;
- 5 (4) purchase agricultural land and related real and
- 6 personal property under the provisions of [section 9];
- 7 (5) upon authorization of an affirmative vote of
- 8 two-thirds of the members of each house of the legislature
- 9 or of a majority of the electors voting thereon, issue bonds
- 10 necessary to provide funds for implementing this [act];
- 11 (6) accept applications from those wishing to lease
- 12 homestead lands;
- 13 (7) evaluate applicants and award lease agreements to
- 14 qualified lessees;
- 15 (8) sell homestead lands as provided in this [act];
- 16 and
- 17 (9) invest any funds generated by sale of bonds in the
- 18 permissible investments outlined in 17-6-211 until such time
- 19 as the funds are needed for land acquisition or any of the
- 20 board's other functions.

21 NEW SECTION. Section 6. Offer of sale to board
22 required for land selling for \$2 million or more. (1) Before
23 conveying in any single conveyance any agricultural land in
24 Montana, including related real or personal property,
25 offered for \$2 million or more, the owner shall offer the

1 land to the board for the same price at which the owner has
2 signed a contract for sale.

3 (2) whenever the owner of record signs a contract to
4 sell agricultural land, including related real or personal
5 property, offered for \$2 million or more, he shall file a
6 homestead land form with the board.

7 (3) The board shall:

8 (a) require such information on the form as it may
9 prescribe; and

10 (b) provide an adequate supply of these forms to each
11 county clerk and recorder in the state.

12 (4) No conveyance involving agricultural land subject
13 to this [act] is effective until 60 days after the board's
14 receipt of the homestead land form offering the land.

15 (5) Separate conveyances designed to evade the
16 provisions of this section are ineffective unless the board
17 has been offered an opportunity to purchase the land.

18 NEW SECTION. Section 7. Criteria for purchase of
19 land. (1) Upon receipt of a homestead land form, the board
20 may within 60 days purchase the land at the same price at
21 which the owner is prepared to sign a contract, provided the
22 following conditions are satisfied:

23 (a) The land has been appraised by the department.

24 (b) The land constitutes an agricultural unit or can
25 be divided into agricultural units capable of supporting an

1 individual or family.

2 (c) The board determines that any selling price higher
3 than the appraised value as determined by the department is
4 based on a bona fide offer from a third party and the offer
5 represents true market value.

6 (d) In the board's estimation, sufficient applicants
7 exist to lease the land within 1 year.

8 (e) Purchase of the lands will not increase the
9 board's indebtedness beyond \$200 million.

10 (2) Nothing in this section requires the board to
11 purchase any agricultural land.

12 NEW SECTION. Section 8. Voluntary sales. Any owner of
13 agricultural land may offer his land to the board before
14 another private offer has been received. The board may
15 purchase the land provided the criteria listed in [section
16 7] have been satisfied.

17 NEW SECTION. Section 9. Purchase of land and related
18 property. (1) Whenever the board decides to purchase offered
19 land and related improvements, it shall adopt a resolution
20 containing a legal description of the land to be purchased,
21 the sales price, and the terms of the sale.

22 (2) The board may, at the option of the seller, give
23 consideration to the seller for the purchase price in any of
24 the following ways:

25 (a) periodic payments of cash;

1 (b) assignments of bonds or securities issued by the
2 board; or

3 (c) cash payments of the full amount of the purchase
4 price.

5 (3) Land purchased according to the provisions of
6 [sections 8 and 9] shall be known as homestead land.

7 NEW SECTION. Section 10. Preparing homestead land for
8 leasing. The board shall lease all homestead lands in
9 agricultural units capable of supporting an individual or
10 family. In determining whether individual purchases should
11 be divided to secure such units, the board may request
12 advice from the department or other state and federal
13 agencies. The board shall assist the lessee in constructing
14 any capital improvements necessary or desirable for the
15 efficient development or use of homestead land.

16 NEW SECTION. Section 11. Determining the lessee. (1)
17 The board shall offer homestead land for lease to qualified
18 Montana citizens.

19 (2) The board shall by rule establish a procedure for
20 soliciting and evaluating applications from qualified
21 Montana citizens to lease the land.

22 (3) In evaluating the applications, the board shall
23 consider:

24 (a) the applicant's training and experience in
25 agriculture;

1 (b) the applicant's prospects for succeeding in an
2 agricultural operation on the homestead land to be leased;

3 (c) the applicant's attempts to secure or prospects of
4 securing other types of financing;

5 (d) the applicant's net worth and prior year's income;
6 and

7 (e) any other factors it may prescribe.

8 (4) The board shall select the best qualified and most
9 deserving applicant from among those applying for each unit.
10 However, the board is not required to lease the land to any
11 applicant and may solicit further applications.

12 NEW SECTION. Section 12. Qualifications of lessee.

13 (1) To be eligible to lease homestead land, an applicant
14 must reside in the state at the time of application and
15 declare his intention to maintain his residence in Montana
16 during the lease.

17 (2) Applications may be submitted by individuals,
18 partnerships, associations, or joint ventures. All persons
19 involved in the application must meet the requirements of
20 subsection (1). Corporations, as defined in 35-1-102, may
21 not apply.

22 NEW SECTION. Section 13. Lease -- terms --
23 conditions. (1) The board shall enter into a lease agreement
24 with the best qualified and most deserving applicant for a
25 period not to exceed 7 years.

(2) The lease agreement shall provide that:

(a) the lessee will make semiannual lease payments in an amount sufficient to pay the costs of the debt incurred by the state in acquiring the homestead land. The board may reduce the lease payment in cases of financial hardship, provided the lessee agrees to pay a higher lease payment in later years to compensate for the loss.

(b) no lessee may sublet or assign the lease without obtaining the written consent of the board;

(c) a lessee may not encumber homestead land in any way during the period of a lease;

(d) the lessee must devote the majority of his time to the active management of homestead land and agree to use the land for agricultural purposes, as defined in 15-7-202; and

(e) the board has a lien on all unharvested crops on the leased land as security for lease payments and money due local taxing jurisdictions.

NEW SECTION. Section 14. Payment of sum equal to taxes. Each lessee shall pay to the local taxing districts in which the leased homestead land is located an amount equal to the sum of all real property taxes and other taxes and assessments that would have been levied on the property if it were owned by the lessee. If for any reason a parcel of land is not subject to a lease agreement, the board shall pay the required sum to the local taxing districts.

1 NEW SECTION. Section 15. Improvements on leased land.
2 During the term of the lease, the lessee may, subject to the
3 approval of the board, make improvements on leased homestead
4 land. The improvements shall be financed by the lessee and
5 shall be his property. If the lease terminates without the
6 lessee purchasing the homestead land, the board shall
7 reimburse the lessee for the appraised value of the
8 improvements, as determined by three independent appraisers.

9 NEW SECTION. Section 16. Cancellation of lease. (1)
10 The board may cancel a lease at any time if the lessee:

11 (a) is in default on lease payments;

12 (b) has failed to pay a local taxing district the sum
13 due under [section 14];

14 (c) has not maintained his residence in the state;

15 (d) has used any portion of the land for
16 nonagricultural purposes without written permission from the
17 board;

18 (e) has failed to cultivate the land in accordance
19 with generally accepted agricultural practices in that area
20 or a practice developed for that area under supervision of
21 any governmental agricultural service agency; or

22 (f) has otherwise violated or failed to perform the
23 terms of the lease agreement.

24 (2) If the lessee refuses to vacate the land within 60
25 days after the lease has been cancelled, the board shall

1 apply for relief to the district court in which the land is
2 situated.

3 NEW SECTION. Section 17. Procedure for cancellation
4 of leases. (1) If the board proposes to cancel a lease, it
5 shall:

6 (a) send written notice by certified mail to the
7 lessee that the lease will terminate on a specified date,
8 not less than 30 days after the date on which the notice is
9 sent, unless the lessee complies with subsection (1)(c) of
10 this section;

11 (b) set out in writing the reasons for the proposed
12 cancellation of the lease and the provision of law under
13 which the termination is authorized;

14 (c) set out in the notice the steps that may be taken
15 by the lessee to remedy the situation giving rise to the
16 possible termination of the lease.

17 (2) If the lessee fails to comply with subsection
18 (1)(c) within 30 days after receipt of notice or such period
19 as the board prescribes, the board shall send the lessee
20 written notification by certified mail of the cancellation
21 of the lease.

22 NEW SECTION. Section 18. Application for court order
23 to preserve or protect land. (1) The board may authorize a
24 person, under authority of an order of the district court,
25 to enter upon the land and perform such acts as are set out

1 in the order if:

2 (a) the lessee has abandoned the land; or

3 (b) the lessee dies and, in the opinion of the board,
4 adequate arrangements have not been made for actions
5 consistent with normal agricultural procedures necessary to
6 preserve or protect the crops growing upon the land.

7 (2) The court order may authorize the board to sell
8 any crop grown or harvested under this section to reimburse
9 itself for any debt due the board by the lessee and
10 authorize any costs incurred by the board in growing,
11 harvesting, or selling the crops to be recovered as a debt
12 due the board from the lessee or, if the lessee is deceased,
13 from his estate. The balance, if any, shall be paid to the
14 lessee or his estate.

15 NEW SECTION. Section 19. Death of lessee. A lease
16 terminates 30 days after the death of a lessee if death
17 occurs during the month of January, February, or December or
18 on December 31 of the year of the lessee's death if the
19 event occurs on or after March 1 but before December 1.

20 NEW SECTION. Section 20. Lease to relative. If a
21 lessee has expressed an intention in writing before death:

22 (1) that the spouse continue farming the land, the
23 board shall upon application enter into an agreement to
24 lease the land to the spouse for the duration of the lease
25 period; or

1 (2) that a lineal descendant or the spouse of a lineal
2 descendant continue farming the land, the board shall upon
3 application enter into an agreement to lease the land to
4 such person if the person meets the requirements of [section
5 12]; or

6 (3) that the land be leased to a specified person, the
7 board shall give such person priority to enter into a lease
8 agreement for the land if the applicant meets the
9 requirements of [section 12].

10 NEW SECTION. Section 21. Termination of lease.
11 Whenever the board receives written notice from a lessee
12 indicating his intention of terminating the lease, it shall
13 send written notice by certified mail to the lessee that the
14 lease will terminate on a specified date not less than 30
15 days after the date on which the notice is sent.

16 NEW SECTION. Section 22. Renewal of lease --
17 prohibition. (1) If at the end of a 7-year lease the lessee
18 has not entered into an agreement with the board to purchase
19 the land, the board may not renew the lease but shall take
20 applications for a new lessee for the property.

21 (2) Homestead land may not be leased for more than 15
22 years after its initial purchase under [section 9]. If at
23 the end of this period a lessee of the land has not entered
24 into an agreement to purchase the land, the board shall
25 offer it for sale to anyone wishing to purchase. In sales to

1 nonlessees, the board may negotiate a sales price reflecting
2 the value of the land as productive agricultural land only
3 but sufficient to repay the debt the board incurred in
4 purchasing the land.

5 NEW SECTION. Section 23. Sale of leased land. (1) A
6 lessee may apply to purchase homestead land after he has
7 leased the land for 2 or more years.

8 (2) The board shall sell homestead land to any lessee
9 who has proven his ability to use the agricultural land
10 productively and wisely.

11 (3) Any conveyance of homestead land shall contain a
12 covenant running with the land that the land shall be
13 forever used for agricultural purposes, as defined in
14 15-7-202.

15 (4) Leased land shall be sold at the price at which
16 the board originally purchased the land under the provisions
17 of [section 9] plus such additional costs of financing
18 incurred by the board.

19 (5) Lease payments in excess of the amount needed to
20 pay the interest on the indebtedness incurred in purchasing
21 the land must be credited toward the sales price of the land
22 should the lessee purchase the land from the board.

23 (6) The purchase agreement must require the purchaser
24 to pay the entire purchase price for the land to the board
25 within 6 months after signing the agreement.

(7) Lessees may apply to the board for a loan to finance the purchase of the land.

NEW SECTION. Section 24. Loan program. (1) The board may establish a loan program, funded by the sale of general obligation bonds, to enable lessees to purchase homestead land.

(2) A loan agreement must provide for full payment of principal and interest on the homestead land loan within 60 years.

(3) The board shall specify in the agreement the reasonable rate of interest it considers necessary.

(4) Loans made by the board must be secured by any liens or collateral the board considers necessary.

NEW SECTION. Section 25. Issue of general obligation bonds -- credit of the state pledged. (1) When authorized by an affirmative vote of two-thirds of the members of each house of the legislature or of a majority of the electors voting thereon, the board may by resolution issue bonds of the state of Montana in a principal amount it determines necessary to provide sufficient funds for achieving any of the purposes of the Montana homestead program, including the payment of interest on bonds, establishment of reserves to secure the bonds, and all other expenditures of the board incident to the program.

(2) Each issue of its bonds is an obligation of the

1 board payable out of any revenues, assets, or money
2 generated by the Montana homestead program. The board shall
3 manage, to the best of its ability, its lease agreements and
4 sales so that the bonds are repaid by the revenue generated
5 by the program. However, the legislature hereby
6 continuously appropriates from the interest and income
7 produced by the coal tax trust fund established in section
8 5, article IX, of the Montana constitution such funds as may
9 be necessary to maintain the capital reserve account for
10 bonds issued by the board at its minimum requirement. In
11 addition, the full faith and credit and taxing powers of the
12 state are pledged for the payment of bonds issued by the
13 board under the provisions of this [act].

14 (3) The bonds must be authorized by resolution of the
15 board and bear a date and mature at times as the resolution
16 provides. A bond may not mature more than 60 years from the
17 date of its issue. The bonds may be issued as serial bonds
18 payable in annual installments or as term bonds or as a
19 combination thereof. The bonds of the board may be sold at
20 public or private sale, at prices determined by the board.

21 (4) The resolution shall specify:

22 (a) the rate of interest of the bonds;

23 (b) the denomination of the bonds;

24 (c) whether the bonds shall be in coupon or registered
25 form and registration privileges, if any;

- (d) the manner and place of execution;
- (e) the manner and place and medium of payment; and
- (f) the terms of redemption.

(5) The total amount of bonds outstanding at any one time may not exceed \$200 million. The maximum rate of interest on bonds issued by the board may not exceed the maximum rate provided in 17-5-101. The bonds may not be sold for less than par.

NEW SECTION. Section 26. Provisions of bond resolutions. A resolution authorizing any bonds or any issue thereof may contain provisions, which shall be a part of the contract or contracts with the holders thereof, as to:

(1) pledging all or any part of the revenues or the property of the board to secure the payment of the bonds or any issue thereof, subject to existing agreements with bondholders;

(2) pledging all or any part of the assets of the board, including mortgages and obligations securing them, to secure the payment of the bonds;

(3) pledging the income and interest from the constitutional coal tax trust fund;

(4) pledging the full faith and credit and taxing powers of the state of Montana to secure the payment of the bonds;

(5) specifying the use and disposition of the gross

1 income from mortgages owned by the board and payment of
2 principal of mortgages owned by the board;

3 (6) the setting aside of reserves of sinking funds in
4 the hands of trustees, paying agents, or other depositories
5 and the regulation and disposition of the reserves;

6 (7) limiting the purpose to which the proceeds of the
7 sale of the bonds may be applied and the pledge of the
8 proceeds to secure the payment of the bonds or of any issue
9 thereof;

10 (8) limiting the issuance of additional bonds, the
11 terms upon which additional bonds may be issued and secured,
12 and the refunding of outstanding bonds;

13 (9) specifying the procedure, if any, by which the
14 terms of any contract with bondholders may be amended or
15 abrogated, the amount of bonds the holders of which must
16 consent thereto, and the manner in which such consent may be
17 given;

18 (10) limiting the amount of money to be expended by the
19 board for its operating expenses;

20 (11) vesting in a trustee property, rights, powers, and
21 duties in trust as the board determines;

22 (12) defining the acts or failures to act which will
23 constitute a default in the obligations and duties of the
24 board to the holders of the bonds and providing for the
25 rights and remedies of the holders of the bonds in the event

1 of such default, including as a matter of right the
2 appointment of a receiver (rights and remedies may not be
3 inconsistent with the laws of the state and the other
4 provisions of this [act]); and

5 (13) specifying any other matters of like or different
6 character which in any way affect the security or protection
7 of the holders of the notes or bonds.

8 NEW SECTION. Section 27. Validity of pledge. A pledge
9 made by the board is valid and binding from the time the
10 pledge is made. The revenues or property pledged and
11 thereafter received by the board are immediately subject to
12 the lien of the pledge without any physical delivery thereof
13 or further act, and the lien of any pledge is valid and
14 binding against all parties having claims of any kind in
15 tort, contract, or otherwise against the board, irrespective
16 of whether such parties have notice thereof. Neither the
17 resolution nor any other instrument by which a pledge is
18 created need be recorded.

19 NEW SECTION. Section 28. Personal liability. The
20 board members and employees of the department are not
21 personally liable for any debt incurred by the board.

22 NEW SECTION. Section 29. Purchase of bonds --
23 cancellation. The board, subject to existing agreements with
24 bondholders, may out of any funds available for that purpose
25 purchase bonds of the board, which shall thereupon be

1 cancelled, at a price not exceeding:

2 (1) the current redemption price plus accrued interest
3 to the next interest payment thereon if the bonds are then
4 redeemable; or

5 (2) the redemption price applicable on the first date
6 after purchase upon which the bonds become subject to
7 redemption, plus accrued interest to that date if the bonds
8 are not then redeemable.

9 NEW SECTION. Section 30. Trust indenture. In the
10 discretion of the board, the bonds may be secured by a trust
11 indenture between the board and a corporate trustee, which
12 may be a trust company or bank having the power of a trust
13 company within or without the state. A trust indenture may
14 contain such provisions for protecting and enforcing the
15 rights and remedies of the bondholders as are reasonable and
16 proper and not in violation of law, including covenants
17 setting forth the duties of the board in relation to the
18 exercise of its powers and the custody, safeguarding, and
19 application of all money. The board may provide by a trust
20 indenture for the payment of the proceeds of the bonds and
21 revenues to the trustee under the trust indenture of another
22 depository and for the method of disbursement, with
23 reasonable safeguards and restrictions. All expenditures
24 incurred in carrying out a trust indenture may be treated as
25 part of the operating expenses of the board.

1 NEW SECTION. Section 31. Negotiability of bonds.
 2 Bonds issued by the board are negotiable instruments under
 3 the Uniform Commercial Code, subject only to the provisions
 4 for registration of bonds.

5 NEW SECTION. Section 32. Continuing validity of board
 6 members signatures. If any board member whose signature
 7 appears on bonds or coupons ceases to be a member before the
 8 delivery of the bonds, his signature continues to be valid
 9 and sufficient for all purposes.

10 NEW SECTION. Section 33. Accounts of the board. (1)
 11 There is a homestead land financing account in the bonds
 12 proceeds and insurance clearance fund provided for in
 13 17-2-102. All funds from the proceeds of bonds issued under
 14 this [act], fees and other money received by the board,
 15 money appropriated by the legislature for the use of the
 16 board in carrying out this [act], and money made available
 17 from any other source for the use of the board must be
 18 deposited in the homestead land financing account except as
 19 otherwise provided by law and except as necessary to
 20 maintain the capital reserve and revolving accounts. All
 21 funds deposited in the housing finance account are
 22 continuously appropriated to and may be expended by the
 23 board for the purposes authorized in this [act].

24 (2) There is a capital reserve account in the sinking
 25 fund provided for in 17-2-102. The capital reserve account

1 consists of the aggregate of money retained by the board
2 under existing agreements with bondholders as the minimum
3 reserve requirement described in [section 31] for each bond
4 issue sold by the board.

5 (3) There is an account in the revolving fund provided
6 for in 17-2-102. Funds appropriated by the legislature for
7 use of the board in payment of expenses incurred in
8 implementing this program shall be transferred to the
9 revolving account. Funds expended by the board from this
10 account shall be repaid into the revolving account from the
11 fees and charges collected and from other money available
12 for such repayment in accordance with this [act].

13 NEW SECTION. Section 34. Reserve funds and
14 appropriations. (1) The board shall pay into the capital
15 reserve account:

16 (a) any funds appropriated and made available by the
17 state for the purpose of the account;

18 (b) any proceeds of the sale of bonds to the extent
19 provided in the resolutions of the board authorizing their
20 issuance or in any trust indenture securing their repayment;
21 and

22 (c) any other funds which may be available to the
23 board for the purpose of the account from any other source.

24 (2) All funds held in the capital reserve account must
25 be used solely for the payment of the principal of bonds

1 secured in whole or in part by the account or of the sinking
2 fund payments with respect to the bonds, the purchase or
3 redemption of the bonds, the payment of interest on the
4 bonds, or the payment of any redemption premium required to
5 be paid whenever the bonds are redeemed prior to maturity.
6 Funds in the account may not be withdrawn at any time in an
7 amount which reduces the amount of the account to less than
8 the sum of minimum capital reserve requirements established
9 for the account, except for the purpose of making, with
10 respect to bonds secured in whole or in part by the account,
11 payment, when due, of principal, interest, redemption
12 premiums, or sinking fund payment for the payment of which
13 other money pledged is not available. Any income or interest
14 earned by or incremental to the capital reserve account
15 because of its investment may be transferred to other
16 accounts of the board to the extent it does not reduce the
17 amount of the capital reserve account below the sum of
18 minimum capital reserve requirements for the account.

19 (3) The board may not issue bonds secured in whole or
20 in part by the capital reserve account unless the board
21 deposits in the account, from the proceeds of the bonds
22 issued or from any other sources, an amount not less than
23 the minimum capital reserve requirement for these bonds. For
24 the purposes of this section, the term "minimum capital
25 reserve requirement" means, as of any particular date of

1 computation, an amount of money, as provided in the
2 resolution of the board authorizing the bonds or indenture
3 securing the bonds, equal to not more than the greatest of
4 the respective amounts for the current or any future fiscal
5 year of the board of annual debt service on the bonds of the
6 board secured in whole or in part by the account. The annual
7 debt service for any fiscal year is the amount of money
8 equal to the aggregate of all interest and principal payable
9 on the bonds during the fiscal year, calculated on the
10 assumption that all the bonds are paid at maturity. If any
11 amount of the bonds is required to be redeemed on an earlier
12 date by the operation of a sinking fund, that amount is
13 considered payable on those bonds during the year they are
14 to be redeemed for the purposes of this calculation.

15 (4) In computing the amount of the capital reserve
16 account, securities in which all or a portion of the account
17 are invested shall be valued at par or, if purchased at less
18 than par, at their cost to the board.

19 NEW SECTION. Section 35. Maintenance of capital
20 reserve account. In order to assure the maintenance of the
21 capital reserve account, the governor shall inform the
22 director of the department of administration when the
23 account falls below the minimum capital reserve requirement.
24 The director shall transfer the sum necessary to restore
25 this minimum from an earmarked revenue account containing

1 income from the constitutional coal tax trust fund.

2 NEW SECTION. Section 36. Refunding obligations --
3 sale. Refunding obligations issued as provided in 90-6-121
4 may be sold or exchanged for outstanding obligations issued
5 under this [act]. The proceeds may be applied to the
6 purchase, redemption, or payment of outstanding obligations.
7 Pending the application of the proceeds to the payment of
8 outstanding obligations, the proceeds may be invested as
9 provided in Title 17, chapter 6, if permitted in the
10 resolution authorizing the issuance of the refunding
11 obligations or in the trust agreement securing them.

12 NEW SECTION. Section 37. Refunding obligations --
13 issuance. The board may provide for the issuance of
14 refunding obligations for refunding any obligations then
15 outstanding which have been issued under this [act],
16 including the payment of any redemption premium and any
17 interest accrued or to accrue to the date of redemption of
18 the obligations. The issuance of obligations, the maturities
19 and other details, the rights of the holders, and the
20 rights, duties, and obligations of the board are governed by
21 the appropriate provisions of this [act] which relate to the
22 issuance of obligations.

23 NEW SECTION. Section 38. Tax exemption of bonds.
24 Bonds issued by the board under this [act] and their
25 transfer and income, including any profits made on their

sale, are exempt from taxation by the state or any political subdivision or other instrumentality of the state, except for inheritance, estate, and gift taxes. The board is not required to pay recording or transfer fees or taxes on instruments recorded by it.

NEW SECTION. Section 39. Pledge against impairment of contracts. In accordance with the constitutions of the United States and the state of Montana, the state pledges that it will in no way impair the obligations of any agreement between the board and the holders of notes and bonds issued by the board.

NEW SECTION. Section 40. Annual audit. (1) The board's books and records must be audited by an independent certified public accountant at least once each fiscal year.

(2) The legislative auditor may conduct an audit at the request of the legislative audit committee.

NEW SECTION. Section 41. Report. The department shall transmit to the governor and to each member of the legislature 30 days before the meeting of the legislature a report:

(1) detailing the operations of the homestead program since the adjournment of the last legislature, and

(2) containing a financial statement showing the program's assets and liabilities.

NEW SECTION. Section 42. Powers to interpret broadly.

1 The powers enumerated in this [act] shall be interpreted
2 broadly to effectuate the purposes of the board and may not
3 be construed as a limitation of powers.

4 NEW SECTION. Section 43. Appropriation. There is
5 appropriated \$100,000 to the board from the interest and
6 income from the coal severance tax trust fund. This money
7 shall be used to fund the board's initial expenses. Any
8 excess must be deposited in the board's capital reserve
9 account.

10 NEW SECTION. Section 44. Severability. If a portion
11 of this act is invalid, all valid parts that are severable
12 from the invalid part remain in effect. If a part of this
13 act is invalid in one or more of its applications, the part
14 remains in effect in all valid applications that are
15 severable from the invalid applications.

-End-

JOINT RESOLUTION I

1 _____ JOINT RESOLUTION NO. _____

2 INTRODUCED BY _____

3

4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF
5 REPRESENTATIVES OF THE STATE OF MONTANA URGING THE BOARD OF
6 INVESTMENTS TO PURCHASE MORE SMALL BUSINESS ADMINISTRATION
7 GUARANTEED LOANS.

8

9 WHEREAS, Small Business Administration loans offer
10 important assistance to Montana citizens starting or
11 expanding their businesses; and

12 WHEREAS, small businesses strengthen Montana's economy
13 by providing new jobs, increased tax base, and new life in
14 communities; and

15 WHEREAS, small businesses afford Montana citizens an
16 opportunity to use initiative, creativity, and hard work in
17 creating an independent way of life; and

18 WHEREAS, the number of Small Business Administration
19 loans made in Montana can be increased by the ready
20 availability of a secondary market for the guaranteed
21 portion of the loan; and

22 WHEREAS, Montana law allows the Board of Investments to
23 invest all state funds in securities fully guaranteed by the
24 Small Business Administration; and

25 WHEREAS, loans guaranteed by the Small Business

1 Administration are risk free and offer a high rate of
2 return; and

3 WHEREAS, Montana financial institutions sell most of
4 their Small Business Administration guaranteed loans to
5 out-of-state firms; and

6 WHEREAS, these financial institutions are reluctant to
7 offer Small business Administration guaranteed loans to the
8 Board of Investments because of its cumbersome and
9 time-consuming policies.

10
11 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE
12 OF REPRESENTATIVES OF THE STATE OF MONTANA:

13 That the Legislature urges the Board of Investments to
14 modify its policies in regard to the purchase of Small
15 Business Administration guaranteed loans so that:

16 (1) the board will no longer investigate the credit
17 worthiness of Small business Administration loans, since
18 their repayment is fully guaranteed by the federal
19 Government;

20 (2) the board will simplify its procedures for
21 purchasing Small business Administration guaranteed loans;
22 and

23 (3) the board will actively seek out and purchase more
24 Small Business Administration guaranteed loans, including
25 short-term Small business Administration loans not secured

1 by real property, with the state funds under its management.

2 BE IT FURTHER RESOLVED, that the Legislature requests
3 the board to report to the Legislature prior to each session
4 on the number and amount of Small Business Administration
5 guaranteed loans purchased during the preceding year.

6 BE IT FURTHER RESOLVED, that the Secretary of state
7 send copies of this resolution to the Governor and the
8 members of the board of Investments.

-end-

JOINT RESOLUTION II

1 _____ JOINT RESOLUTION NO. _____

2 INTRODUCED BY _____

3

4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF
5 REPRESENTATIVES OF THE STATE OF MONTANA URGING THE BOARD OF
6 INVESTMENTS TO PARTICIPATE WITH THE FARMERS HOME
7 ADMINISTRATION IN FARM OWNERSHIP LOANS.

8 WHEREAS, agriculture is the backbone of Montana's
9 economy and a vital element of the state's political and
10 social well-being; and

11 WHEREAS, many Montanans desiring to begin a ranching or
12 farming operation are prevented by the rapidly accelerating
13 costs of agricultural land and equipment and by the lack of
14 capital for farm ownership loans and the high interest
15 thereon; and

16 WHEREAS, the Farmers Home Administration is an
17 important source of farm ownership loans for Montanans
18 entering agriculture; and

19 WHEREAS, the Farmers Home Administration is limited, by
20 its lack of funds, in the number of farm ownership loans it
21 can make and Montana applicants must wait up to two years
22 for loans; and

23 WHEREAS, the Farmers Home Administration seeks state
24 agencies to participate in making farm ownership loans; and

25 WHEREAS, these participation loans are very secure in

1 that the participating agency holds the first mortgage; and

2 WHEREAS, these participation loans are a trouble-free
3 investment because Farmers Home Administration staff
4 evaluates and services the loan; and

5 WHEREAS, these loans offer an interest rate equal to
6 many investments currently held by the Board of Investments;
7 and

8 WHEREAS, Montana statute allows the board of
9 Investments to invest most state funds under its management
10 in first mortgages and participations in first mortgages on
11 unencumbered real property; and

12 WHEREAS, the Board of Investments currently invests
13 state funds in mortgages on residential property but not in
14 mortgages on agricultural land.

15
16 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE
17 OF REPRESENTATIVES OF THE STATE OF MONTANA:

18 That the Legislature urges the Board of Investments to
19 actively seek participation agreements with the Farmers Home
20 Administration and invest part of the state funds under its
21 management in farm ownership loans that will give the state
22 a first lien on the real estate.

23 BE IT FURTHER RESOLVED, that the Legislature urges the
24 Board of Investments to expedite its review of such
25 investments in view of their secure nature.

1 BE IT FURTHER RESOLVED, that the Legislature requests
2 the Board of Investments to report annually to the
3 Legislature on the number and amount of participation loans
4 for farm ownership it has made during the preceding year.

5 BE IT FURTHER RESOLVED, that the secretary of state
6 send copies of this resolution to the Governor and the
7 members of the Board of Investments.

-End-

